on a "mechanized" basis "with errors,"[124] and those which are processed on a "non-mechanized" or manual basis), it is apparent that a large portion of CLEC orders, if not most, still require several days for the return of the FOC. Indeed, where any manual processing at all is done, the average time for return of the FOC is more than a day for residential resale orders and more than two days for business resale and UNE orders.[125] Moreover, even for those orders which BellSouth processed on a fully mechanized, flow-through basis in April 1998, more than 5.5 percent of residential resale orders and over 10 percent of business resale orders still required more than a full day for the return of the FOC.

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[124] The division of BellSouth's "mechanized" order category into two subcategories described as "with no errors" and "with errors" creates considerable confusion. Ordinarily one would expect an order with "errors" to be rejected rather than confirmed, but BellSouth's data show that this is not the case. Rather, BellSouth appears to be equating orders with "errors" with orders that fall out to manual processing.

[125] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Firm Order Confirmation Timeliness Report. BellSouth provides no information about how its three categories should be weighted. Based on data provided in state proceedings by BellSouth for its February 1998 percent flow through report, it appears that only about 43 percent of the CLEC orders received by BellSouth were eligible for "mechanized" processing, and that of those CLEC orders eligible for mechanized processing through to a FOC (*i.e.*, not rejected at the LEO gateway and returned to the CLEC), 62.3 percent were processed with no errors, and 37.7 percent had "errors" (either CLEC or BellSouth) that resulted in manual processing by BellSouth. This would indicate that the number of FOCs returned by BellSouth on "non-mechanized LSRs" probably exceeded the number of FOCs returned on "mechanized LSRs," and that more than a third of the "mechanized LSRs" were in the "with errors" category. If so, BellSouth's overall average time for the return of FOCs would also be over one day for residential resale orders and over two days for business resale orders.

70. Furthermore, while one day may be an appropriate minimum FOC return requirement for invoking the remedial provisions of a contract, it clearly does not represent parity of performance. BellSouth's own retail representatives should receive order confirmation (or rejection) information from BellSouth's systems within seconds of their submission of an order. This permits BellSouth's representatives to confirm orders with the customer, or change the order to avoid rejection, while the customer is still on the line. Unless CLECs are also able to obtain this information while the customer is on-line, they will be precluded from providing comparable service to customers. BellSouth's 24-hour standard for the return of firm order confirmations to CLECs, therefore, does not represent parity.

3. Timeliness Of Order Rejections

71. BellSouth's performance in notifying CLECs that their orders have been rejected also demonstrates a clear lack of parity. Indeed, BellSouth reports that its average time for the return of rejection notices to CLECs for orders processed on a "mechanized" basis in April was 7.82 ***days*** for residential resale orders and 6.67 ***days*** for business resale orders.[126] Although BellSouth refuses to provide any comparative data regarding its performance in

[126] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Reject Distribution Interval & Average Interval Report. While the average rejection interval was reduced in May, it was still two days for residential resale orders and 2.6 days for business resale orders.

providing this same information to its own retail representatives, it is readily apparent that its performance for CLECs is a far cry from parity.[127]

4. Percent Order Flow Through

72. As the Commission previously told BellSouth, it is a "critical" aspect of nondiscriminatory access to operations support systems that CLECs have their orders "processed through the BOC's systems in substantially the same time and manner as the BOC's retail business," which includes comparable "flow-through" rates for CLECs.[128] Further, the Commission has found that a "substantial disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, demonstrates a lack of parity."[129]

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[127] *See, e.g., BellSouth South Carolina Order*, ¶ 118 ("there is evidence that BellSouth's retail operations . . . receive the equivalent of an error notice between a few seconds to thirty minutes after entering an order"); *BellSouth Louisiana Order*, ¶ 33 (same); *Ameritech Michigan Order*, ¶ 188 ("order rejection notices generated electronically . . . should be relatively instantaneous").

[128] *BellSouth South Carolina Order*, ¶ 104. *See also Ameritech Michigan Order*, ¶ 137 ("For those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers"); *Local Competition Order*, ¶ 523 ("an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention"); *Second Order on Reconsideration*, ¶ 9 ("to the extent that an incumbent LEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself, . . . the incumbent LEC must provide at least equivalent electronic access to requesting carriers").

[129] *Id.*, ¶ 107. *See also BellSouth Louisiana Order*, ¶ 28 ("We find that the substantial (continued...)

73. Although BellSouth claims that the flow-through rate for CLEC mechanized orders ranged from 76.40 percent in April to 81.53 percent in May,[130] those figures are not the actual flow-through rates for CLEC orders. They are what BellSouth calls its "***adjusted*** flow through percentage," a hypothetical figure which purports to represent what the flow-through percentage would have been if there had been no "CLEC errors."[131] In fact, the actual flow-through percentage for all CLEC mechanized orders was 62.1 percent in April and 69.18 percent in May. Thus, of the 23,640 mechanized CLEC orders received by BellSouth in May, 1397 of those orders (5.9 percent) "fell out" in LEO and were rejected at the outset by BellSouth. Of the remaining 22,243 "LESOG eligible" orders, only 15,388 orders, or 69.18 percent, actually flowed through BellSouth's ordering systems.[132] Further,

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[129] (...continued)
disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, indicates that BellSouth is not providing competing carriers with nondiscriminatory access to its OSS"), ¶ 25 ("it is virtually impossible for orders that are processed manually to be completed in the same amount of time as orders that flow through electronically"); *Ameritech Michigan Order*, ¶ 196 ("Because it is virtually impossible for orders that are processed manually to be completed in the same time as orders that flow through electronically, it is difficult to see how equivalent access could exist when [the BOC] processes a significant number of orders from competing carriers manually").

[130] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Flow-Through Service Requests (Summary) Report.

[131] *See id.* and Percent Flow-Through Service Requests (Detail) Report.

[132] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Flow-Through Service (continued...)

although BellSouth claims that 3,370 of the 6,855 orders that fell out in LESOG in May 1998 were due to "CLEC errors,"[133] there is, once again, no evidence whatever to support that claim.[134] Quite the contrary, the evidence shows that at least some of the so-called CLEC errors were in fact caused by BellSouth's failure to provide adequate information to CLECs.[135] Moreover, even by BellSouth's analysis, over half of the fall out of CLEC orders from LESOG (3,485 orders or 50.8 percent) was attributable to BellSouth.[136]

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[132] (...continued)
Requests (Detail) Report.

[133] *Id.*

[134] The Commission has twice previously considered and rejected BellSouth's contention that its low flow-through rate for CLEC orders is the fault of CLEC errors for lack of evidence. *See BellSouth South Carolina Order*, ¶¶ 108-113 (rejecting BellSouth's claim for failure to "provide credible evidence or explanation to substantiate its conclusions regarding the causes of order errors"); *BellSouth Louisiana Order*, ¶ 29 (finding that BellSouth "failed to substantiate its claim that competing carriers are to blame for the low order flow-through rate"). Despite the Commission's findings in those prior cases, BellSouth again offers no evidence whatever in this case to support its claim.

[135] The inadequacy of the information provided to CLECs is discussed in more detail in the Affidavit of Jay M. Bradbury. *See also BellSouth South Carolina Order*, ¶ 110; *BellSouth Louisiana Order*, ¶ 29.

[136] The fallout attributable to BellSouth is obtained by subtracting the "CLEC Errors" from the total number of errors, which is the difference between the "LESOG Eligible" and the "LESOG Flowthru." *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Flow-Through Service Requests (Detail) Report. In prior submissions, this difference was referred to by BellSouth as "BellSouth Errors."

74. BellSouth also exaggerates its flow-through rate by combining all CLEC orders submitted through both the EDI and LENS interfaces notwithstanding the fact that BellSouth has specifically disavowed reliance upon LENS as an ordering interface for purposes of meeting the nondiscriminatory access requirements of Section 271 because LENS is primarily a pre-ordering interface with only limited ordering capability.[137] For this reason, the Commission has twice previously rejected BellSouth's attempts to aggregate its flow-through data for both interfaces, and has only considered CLEC orders submitted via the EDI interface in evaluating BellSouth's flow-through rate.[138] Nevertheless, without regard to those two prior determinations by the Commission, BellSouth continues to try to bury its EDI flow-through rate in a mass of LENS ordering data.

75. This distinction is significant because BellSouth's flow-through rate for EDI is substantially lower than for LENS. In May 1998, for example, the flow-through rate

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[137] *See, e.g., BellSouth South Carolina Order,* ¶¶ 91, 94; Stacy OSS Aff., ¶ 99 ("the primary function of the LENS interface is to obtain non-discriminatory access to ***pre-ordering*** information. BellSouth recommends EDI and EXACT, the industry-standard, non-discriminatory interfaces for ordering") (emphasis in original). For an analysis of the deficiencies of LENS as an ordering interface, see the Affidavit of Jay M. Bradbury.

[138] *See, e.g., BellSouth South Carolina Order,* ¶¶ 105, 109 n.331 ("Although BellSouth has provided aggregate [flow-through] data for carriers using both the EDI and LENS interfaces for ordering, . . . we look only to the data for those carriers using the EDI interface"); *Louisiana Order,* ¶ 24 & n.79 ("we only considered orders submitted via the EDI interface" in evaluating flow-through rates).

for EDI orders was only 34.2 percent -- even lower than it was last year.[139] Thus, of the 1,696 EDI orders received by BellSouth in May 1998 from CLECs who used EDI exclusively,[140] 66 orders were rejected at the LEO gateway, leaving 1,630 "LESOG eligible" orders, of which only 557 orders, or 34.2 percent, actually flowed through BellSouth's ordering systems without manual intervention.[141] Furthermore, of the 1,073 EDI orders that fell out in LESOG, only 341 were attributed by BellSouth to CLEC errors,[142] meaning that more than two-thirds of the fall out of EDI orders in LESOG was attributed solely to BellSouth.

76. Neither the 69.18 percent flow-through rate for all mechanized CLEC orders nor the 34.2 percent rate for EDI orders represents parity of access to BellSouth's ordering systems. Although BellSouth's overall order flow-through rate is obscured by its

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[139] *See BellSouth Louisiana Order*, ¶ 24 (flow-through rate for EDI orders was 40% in August 1997 and 54% in September 1997).

[140] BellSouth received an additional 73 EDI orders from two other CLECs who used LENS primarily (496 orders) to submit orders to BellSouth. Because BellSouth does not provide any way separately to track what happened to the 73 EDI orders apart from the LENS orders, we have excluded those two carriers from our analysis of BellSouth's EDI flow-through rates.

[141] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Flow-Through Service Requests (Detail) Report. Further, even the so-called "adjusted flow through" percentage (obtained by adding all orders with "CLEC errors" to the actual number of flow-through orders in calculating the flow-through percentage) for EDI orders in May 1998 was only 55.1%.

[142] *Id.*

separation of its own flow-through results into retail residence (96.4 percent flow through) and retail business (82.51 percent flow through),[143] both categories of BellSouth's retail business have flow-through rates that are substantially higher than the CLEC rate. Indeed, they are even higher than the so-called "adjusted" CLEC flow-through rates calculated by BellSouth. Moreover, based on data previously submitted to the Commission by BellSouth, the retail residential category for which BellSouth had a 96.4 percent flow-through rate constitutes 87.18 percent of BellSouth's retail orders.[144] This means that BellSouth's overall flow-through rate, including both residential and business, was approximately 94.62 percent -- much higher than the CLEC flow-through rate whether adjusted or not.

5. Speed Of Answer In Ordering Center

77. BellSouth's data also show that it provides substantially better performance in answering calls to its ordering centers from its own retail business customers than from its CLEC customers. Thus, BellSouth's average time to answer CLEC calls to BellSouth's Local Carrier Service Centers was 31 seconds in both April and May, while its average time to answer calls at BellSouth's Business Service Centers serving BellSouth's own

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[143] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Flow-Through Service Requests (Summary) Report.

[144] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-11, pp. 17-20 (August 1997 data).

retail business customers during those months was a substantially faster 11.5 and 21.9 seconds, respectively.[145]

6. Average Order Completion Intervals

78. In order to show parity for ordering and provisioning, BellSouth must show that it is provisioning CLEC orders within the same amount of time that it provisions the same or comparable services for its own local retail customers. Accordingly, the Commission has found that comparative data for "average installation intervals" is absolutely "critical" and "fundamental" to any showing of nondiscriminatory performance in support of a Section 271 application.[146]

79. The average order completion data submitted by BellSouth with its application plainly show that BellSouth is not providing parity of performance in this critical area. For both residence and business orders that do not require dispatch, for example, BellSouth's average order completion intervals for CLECs are substantially longer than its

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[145] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Speed Of Answer In Ordering Center Report.

[146] *See Ameritech Michigan Order*, ¶¶ 164-171, 185, 212. *See also BellSouth South Carolina Order*, ¶ 132 (finding that data on average installation intervals constitute "a critical measure of parity"); *Bell Atlantic/NYNEX Merger Order*, App. D, Measure 9 (requiring merged company to monitor and report the "average completed interval" measured from the time that a confirmed order was received by the BOCs to the actual order completion date).

average order completion intervals for its own retail operations.[147] Likewise, the percentage of CLEC resale orders that were completed within the same day that the order was received was only about half of the percentage of BellSouth's retail orders that were completed the same day.[148]

80. Further, it does not appear that BellSouth's average order completion interval includes the additional time that BellSouth takes to notify the CLEC that the order has been completed so that the CLEC knows that the customer is in service and can begin billing for the service or addressing any additional needs or maintenance problems that the customer might experience.[149] If the time required for CLEC notification is not included in BellSouth's data, the CLEC average completion interval reported by BellSouth is understated and is

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[147] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Order Completion Interval Distribution & Average Interval (No Dispatch) Report (showing average interval for CLEC residential resale (< 10 Ckts) in May of 1.79 days as compared to .89 days for BellSouth retail, and average interval for CLEC business resale (< 10 Ckts) in May of 1.41 days as compared to 1.09 days for BellSouth retail, with substantially larger performance disparities in March and April).

[148] *See id.* (showing that 61.05% of BellSouth residential retail orders (< 10 Ckts) in May were completed on the same day, as compared to only 36.2% of CLEC residential resale orders, and 73.66% of BellSouth business retail orders (< 10 Ckts) were completed on the same day, as compared to only 40.87% of CLEC business resale orders).

[149] *See, e.g., Performance Measurements NPRM*, ¶ 53 (tentatively concluding that the average completion interval should be measured from the receipt of a valid order until the time that the incumbent LEC "returns a completion notification to the competing carrier").

actually longer by the additional time required for notification of order completion to the CLEC -- an interval on which BellSouth provides no data.

7. Percent Missed Installation Appointments

81. BellSouth's data for the percentage of missed installation appointments continue to show that BellSouth's performance for CLECs, including both residence and business orders, is substantially worse than its performance for its own retail operations. Thus, continuing the discriminatory performance reported in its prior Section 271 applications,[150] BellSouth's data show that for installations involving no dispatch and less than 10 circuits in May, BellSouth missed 1.1 percent for CLEC residence and 2.1 percent for CLEC business as compared to a perfect 0.0 percent for BellSouth residence and only 0.2 percent for BellSouth business.[151] Moreover, it is almost certain that these performance disparities represent discrimination in light of BellSouth's showing in previous Section 271

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[150] *See, e.g.*, Stacy First Louisiana Performance Measurements Aff., Ex. WNS-9, pp. 2 & 4 (showing performance for CLECs far below BellSouth's so-called "lower control limit"); Pfau First Louisiana Aff., ¶¶ 82-86.

[151] Stacy Performance Measurements Aff., Ex. WNS-3, Percent Missed Installation Appointments Report. Similarly, BellSouth's April data show that for installations involving no dispatch (< 10 Ckts) BellSouth missed 0.9% for CLEC residence and 1.7% for CLEC business as compared to 0.1% for BellSouth residence and 0.5% for BellSouth business. *Id.*

applications that the standard deviations for this measurement were only 0.01 percent for BellSouth residential (non-dispatch) and 0.02 percent for BellSouth business (non-dispatch).[152]

8. Percent Installation Troubles Within 30 Days

82. BellSouth's performance data for the percentage of provisioning troubles occurring within 30 days of installation also show significantly poorer performance for CLECs than for BellSouth's own retail operations. Thus, for residential resale orders in May 1998, CLECs experienced provisioning troubles on 11.66 percent of orders of less than 10 circuits and 25.81 percent for orders of 10 circuits or more, as compared to only 7.82 percent and 13.38 percent, respectively, for BellSouth's residential retail orders.[153] Moreover, these overall results for residential resale are similar to the results for residential resale service with

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[152] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-9, pp. 2 & 4. BellSouth also missed a whopping 18.8% of installation appointments for CLEC business customers involving a dispatch and more than 10 circuits, as compared to only 8.3% of its installation appointments for BellSouth's own business customers. Stacy Performance Measurements Aff., Ex. WNS-3, Percent Missed Installation Appointments Report.

[153] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Provisioning Troubles Within 30 Days of Installation Report.

no dispatch,[154] a measurement for which BellSouth previously reported a standard deviation of only 0.61 percent.[155]

83. The evidence of discrimination against CLECs is particularly obvious in the case of BellSouth's performance in the installation of local interconnection trunks. BellSouth reports that 100 percent of its installations of local interconnection trunks for CLECs in May experienced troubles within 30 days as compared to only 0.31 percent for BellSouth[156] -- a measurement for which BellSouth previously reported a standard deviation of 0.15 percent.[157]

9. Provisioning Order Accuracy

84. In prior performance monitoring reports submitted by Mr. Stacy to the Georgia Public Service Commission, BellSouth included a performance report for Percent

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[154] *Id.* (showing provisioning troubles on 10.96% of CLEC residential resale orders (< 10 Ckts) versus only 7.47% for BellSouth residential retail orders). It does not appear that there was any residential resale activity for CLECs in May involving no dispatch and more than 10 circuits. BellSouth's performance for CLECs on residential resale orders involving a dispatch was also substantially worse than its performance for its own residential resale customers. *Id.* (showing provisioning troubles on 18.39% (< 10 Ckts) and 25.81% (≥ 10 Ckts) of CLEC orders versus only 13.5% for both categories of BellSouth's residential resale orders).

[155] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-9, p. 22.

[156] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Percent Provisioning Troubles Within 30 Days of Installation Report.

[157] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-9B, p. 2.

Provisioning Order Accuracy.[158] This performance data is not included with BellSouth's current submission.

85. This omission conceals discriminatory performance because BellSouth's performance data showed a substantially lower provisioning order accuracy for CLEC orders as compared to BellSouth's own retail provisioning order accuracy. Thus, the data submitted by BellSouth in Georgia showed that the overall percentage of CLEC orders that were provisioned error-free was only 84.39 percent as compared to 96.91 percent for BellSouth.[159] Furthermore, reinforcing the importance of fully mechanized flow-through processing of CLEC orders, the data showed that CLEC orders handled on a "mechanized" basis had a provisioning order accuracy of 95.24 percent as compared to only 83.57 percent for those orders handled on a non-mechanized basis.[160]

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[158] *See* BellSouth Percent Provisioning Order Accuracy Report, submitted by Mr. Stacy to the Georgia Public Service Commission in Docket No. 7253-U on May 22, 1998, as part of Exhibit WNSPM-1 (copy attached as Attachment 1). *See also Ameritech Michigan Order*, ¶ 212 (requiring the submission of performance data on both "service order accuracy" and "provisioning accuracy").

[159] *See* BellSouth Percent Provisioning Order Accuracy Report, submitted by Mr. Stacy to the Georgia Public Service Commission in Docket No. 7253-U on May 22, 1998, as part of Exhibit WNSPM-1 (copy attached as Attachment 1).

[160] *See id.*

10. Percent Out Of Service Over 24 Hours

86. BellSouth reports for May that the percentage of trouble reports involving an out of service condition that was not cleared within 24 hours for CLEC residential customers was 28.25 percent as compared to 22.13 percent for BellSouth residential customers.[161] Although BellSouth does not report the standard deviations for this measurement in its present application, BellSouth previously reported a standard deviation for this measurement of 1.49 percent for residential non-dispatch[162] and that the residential non-dispatch category accounted for 85 percent of total CLEC residential service orders.[163]

11. Billing Usage Record Timeliness

87. BellSouth's performance data for usage record timeliness also do not support its claim that parity is being provided for CLECs. For example, BellSouth's April data show that 59.74 percent of BellSouth's own retail usage records were delivered on the following day, whereas less than half of one percent (0.44 percent) of CLEC usage was

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[161] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Out of Service Over 24 Hours Report.

[162] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-9, pp. 25 & 26.

[163] *See* Stacy First Louisiana Performance Measurements Aff., Ex. WNS-11, pp. 21-22, 26-27, 31-32 (September 1997 data).

delivered on the following day.[164] Even by the third day the margin was 94.24 percent for BellSouth as compared to only 67.59 percent for CLECs.[165] Moreover, as explained in the Affidavit of Jay M. Bradbury, the billing data that has been received from BellSouth by AT&T has been neither accurate nor complete.

VI. BELLSOUTH HAS NOT PROPERLY IMPLEMENTED SEVERAL OF ITS MEASUREMENTS.

88. A number of BellSouth's performance measurements have also not been properly implemented by BellSouth. In order to provide meaningful information on the question of whether nondiscriminatory access is being provided to CLECs, it is imperative that performance measurements be "properly implemented."[166] As the Department of Justice has explained:

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[164] *See* Stacy Performance Measurements Aff., Ex. WNS-3, Usage Record Timeliness And Completeness Report. BellSouth's performance both for itself and for CLECs got worse in May. It should also be noted that the BellSouth data on this chart is limited to "messages processed and transmitted via CMDS" (*id.*, Ex. WNS-1, p. 28), resulting in a lower volume of usage records for BellSouth than for the CLECs.

[165] *Id.* The fact that BellSouth is meeting the minimum contractual requirement under the AT&T-BellSouth Agreement of delivering at least 95 percent of usage records within six days does not mean that BellSouth is providing parity of performance. *See Ameritech Michigan Order*, ¶ 142 ("satisfying the performance standards contained in its interconnection agreements does not necessarily demonstrate compliance with the statutory [nondiscrimination] standard").

[166] *See* Letter from Donald J. Russell, DOJ, to Liam S. Coonan, SBC Communications, Inc., March 6, 1998, p. 1.

> "[T]here are important repercussions that may arise from how the [performance] measures are implemented. For example, definitional issues and other details connected with the measures themselves (such as the basis upon which due dates and start times are set in particular measures) could significantly affect the meaning of the data."[167]

A. BellSouth's Measurements Are Improperly Or Inadequately Defined.

89. Proper implementation requires, first and foremost, that the measurement accurately measure what is intended to be measured. For example, the pre-ordering response time measurement is designed to provide a comparison between the time it takes for a CLEC to obtain selected pre-ordering information from the BOC and the time it takes for the BOC's own retail representative to obtain the same information. If the CLEC's request passes through a different gateway than the BOC's request, there is a potential for different response times. In that situation, it would be improper to include in the measurement only the time between the receipt of the request by the underlying legacy system and the legacy system response, thereby excluding the time required for transit through the gateway. Yet this is just what BellSouth appears to have done in its measurement of average response time for pre-ordering.

90. As the Commission has also made clear, performance measurements must be "clearly defined" so that other parties can understand and rely on the resulting

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[167] *Id.*, pp. 1-2.

performance data with assurance that it represents what it purports to represent.[168] Several of BellSouth's measurements are plagued by just the sort of conflicting interpretations of unclear definitions which the Commission has found unacceptable in other Section 271 applications. For example, BellSouth's average completion interval measurement is defined in ambiguous and potentially conflicting ways. First, it is described as the elapsed time from BellSouth's "receipt of a syntactically correct order from the CLEC" to BellSouth's "actual order completion date."[169] Then, on the same page this measurement is defined as the average time from the "issue date of service order" to the actual order completion date.[170] It is not clear whether this "issue date of service order" is the same as the "receipt of a syntactically correct order from the CLEC." Moreover, unlike the definition proposed by the Commission, BellSouth is not including the time that may elapse between the "actual order completion date" and the time that is returns a completion notificitation to the CLEC.[171] If the time which

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[168] *See, e.g., Ameritech Michigan Order*, ¶ 212 (BOC must "ensure that its performance measurements are clearly defined"), ¶ 209 (performance measurements must be "clear and precise" so as to make them "meaningful to [the Commission] and commenting parties," and not subject to "ambiguity" or "conflicting interpretations").

[169] Stacy Performance Measurments Aff., Ex. WNS-1, p. 9. This is also the definition proposed by the Commission. *See Performance Measurements NPRM*, ¶ 53 & n.78.

[170] *Id.*

[171] *Compare id. with Performance Measurements NPRM*, ¶ 53 & n.78 (proposing that average completion interval be measured from the "receipt of a valid order" at the interface to the time (continued...)

elapses between BellSouth's completion of the order and its return of a valid order completion notification to the CLEC -- an interval on which BellSouth provides no data -- is significant, there could be a substantial disparity in the interval for CLECs depending on which time is used as the end-point of the measure.

91. A similar ambiguity is raised by BellSouth's maintenance average duration measurement. BellSouth measures only the elapsed time from receipt of a trouble "until the trouble is status cleared."[172] BellSouth's measurement apparently does not include the additional time that may elapse between when the BellSouth technician clears the trouble and when BellSouth notifies the CLEC that the trouble has been cleared, which additional time would be included under the Commission's proposed average time to restore measurement.[173]

92. Other BellSouth performance measurements contain inappropriate or ambiguous exclusions. For example, BellSouth states that it excludes "any invoices rejected due to formatting or content errors" from its billing measures for invoice accuracy and

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[171] (...continued)
that the incumbent LEC "returns a completion notification to the competing carrier").

[172] Stacy Performance Measurements Aff., Ex. WNS-1, p. 24.

[173] *See Performance Measurements NPRM*, ¶ 82 & p. A10 ("Average Time to Restore measures the time from when a service problem is reported to the incumbent LEC . . . to the time when the incumbent LEC returns a trouble ticket resolution notification to the competing carrier").

timeliness.[174] If true, this exclusion renders BellSouth's data on billing invoice accuracy utterly meaningless.

93. Similarly, BellSouth's exclusion of "invalid service requests" from its measure of firm order confirmation timeliness[175] seems strange because "invalid" service requests should not receive FOCs in the first place, but should be included in BellSouth's data on order rejections. Further, the exclusion of "orders received outside of normal business hours" from BellSouth's FOC timeliness measurement[176] is inappropriate and unreasonable as applied to CLEC orders that are received and processed by BellSouth's systems on an electronic basis.

B. BellSouth's Measurements Are Not Sufficiently Disaggregated To Permit Meaningful Comparisons.

94. In addition to being clearly and properly defined, performance data must also be "sufficiently disaggregated to permit meaningful comparisons."[177] There are many instances in which BellSouth's performance data are not sufficiently disaggregated.

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[174] Stacy Performance Measurements Aff., Ex. WNS-1, p. 27.

[175] Stacy Performance Measurements Aff., Ex. WNS-1, p. 7.

[176] *Id.*

[177] *Ameritech Michigan Order*, ¶¶ 212, 206.

1. Geographic Disaggregation

95. BellSouth has reported its results only on a state or region-wide level. However, particularly where competitors are in the early stages of market entry, they are likely to operate only in much more limited geographic market areas. In this situation, comparing BellSouth's performance for a CLEC operating in a few large cities with BellSouth's performance for itself on a statewide basis (where there is likely to be a greater proportion of non-metropolitan areas with, for example, longer travel times on dispatch activities and less modern loop plant technology) is likely to result in misleading comparisons. A meaningful "apples-to-apples" comparison requires that performance data for both CLECs and BellSouth be reported for the same geographical market area. As the Department of Justice has explained:

> "Geographic parity requires that performance measures be identified and measured where a CLEC markets [its] products. . . . If a CLEC offers service to smaller geographic areas, appropriate performance measures would provide comparative BOC results for those areas."[178]

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[178] Friduss S.C. Aff. (DOJ), ¶ 68. *See also* Comments of Washington Utils. & Transp. Comm'n, filed in *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (June 1, 1998) ("Within a state, the date should be disaggregated by local areas, such as by MSA (first tier cities), SMSA (second tier cities), and rural areas. In many cases service availability, repair response, and service quality differ significantly between rural and metropolitan areas. Therefore, a competitor in a high density area should be compared with other metropolitan area results, and a competitor in a rural area should be compared with rural results").

96. The misleading nature of statewide averages is shown by the one instance in which BellSouth did provide a limited amount of disaggregated data. Thus, BellSouth's April 1998 data on the intra-company delivery of CMDS daily usage data submitted to the Georgia Commission shows that the number of CMDS daily tickets invoiced within one day varied from 38.0 percent in Ft. Lauderdale to 70.2 percent in Jacksonville.[179] The average result reported by BellSouth for this measure of 60.6 percent is far removed from both of these numbers and is misleading as applied to either of those cities. If such different results occur in BellSouth's daily usage processing operations, where one would expect relatively uniform geographic performance, it is reasonable to expect that geographic differences will be even more pronounced in other areas, such as provisioning and maintenance, and the need for geographic disaggregation of performance data much greater. To avoid this problem, BellSouth should report its data on a market by market basis reflecting the area in which the work is managed.[180]

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[179] *See* BellSouth April Performance Measurement Data, Billing Customer Usage Data, CMDS Daily Ticket Delay Analysis, Intra-Company, submitted to the Georgia Public Service Commission, under letter from Fred McCallum, Jr., BellSouth, dated May 21, 1998 (copy attached as Attachment 2).

[180] For example, the AT&T-Pacific Interconnection Agreement requires that Pacific report its monthly performance for several provisioning and maintenance measurements for each of four separate regions within the State of California. *See* AT&T-Pacific Interconnection Agreement, Attachment 17.

2. Product Disaggregation

97. In addition, BellSouth has offered insufficient product disaggregations. For example, BellSouth has combined all categories of private line services into a single "Resale Special" category even though substantial differences in provisioning and maintenance can and do exist for voice grade private line services, 1.5 megabit service, and 45 megabit service. Similarly, PBX trunks and ordinary business POTS lines are apparently combined in the category "Resale Business" notwithstanding the fact that BellSouth's own Services Interval Guide for CLECs indicates a longer delivery interval for PBX trunks than for a comparable volume of business POTS lines.[181] Likewise, BellSouth's guide for CLECs identifies six different types of unbundled loops with several different target installation intervals, all of which BellSouth proposes to combine into a single unbundled loop category.[182] Allowing BellSouth to aggregate such dissimilar services before comparison to the CLEC result, which is likely to be based on a different product mix, will result in comparisons of questionable

[181] *See* BellSouth Products and Services Interval Guide, filed as Stacy OSS Aff., Ex. WNS-18, pp. 5-6.

[182] *Id.*, p. 7. See *also Texas PUC Order*, p. 11 ("the performance measures related to DS-1, DS-3 and higher capacity loops and dedicated transport should be tracked separately").

value. In such situations, BellSouth should be required to provide its data in an appropriately disaggregated form.[183] As the Department of Justice has stated:

> "Class of Service parity requires that performance measures be identified and measured for end-user classes of service targeted by a CLEC. For example, if a CLEC targets only small-business customers, appropriate performance standards would provide BOC results for its small-business customers only for comparison purposes."[184]

VII. BELLSOUTH HAS NOT SHOWN THAT ITS PERFORMANCE DATA ARE RELIABLE.

98. In order to show that the results it is reporting are reliable and accurately reflect its performance, BellSouth also needs to retain the data used to derive its performance reports and make that data reasonably available so that other interested parties can verify BellSouth's measurements and performance results by way of audit and, where appropriate, compare those results to independently derived measures, such as data that may be captured independently by the CLECs.[185] For this purpose, procedures need to be established for the

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[183] A proposed list of appropriate minimum levels of product disaggregation for BellSouth's performance data is attached as Attachment 3. This list was previously proposed in the Comments of AT&T, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 (filed June 1, 1998), Attachments C & D.

[184] Friduss S.C. Aff. (DOJ), ¶ 68. *See also* Friduss Okla. Aff. (DOJ), ¶ 39.

[185] *See also Texas PUC Order*, p. 12 ("SWBT must allow CLECs to audit the underlying performance data used in calculating the required measure to provide CLECs the ability to satisfy any concerns that the performance measures 'mask' discriminatory treatment").

retention of the data and calculations underlying BellSouth's monthly performance reports sufficient to enable an independent audit to be performed.[186] This need was recognized by the Georgia Public Service Commission, which ordered BellSouth to "permit competing carriers reasonable audit rights" and to "provide access to the available data (i.e. Data Warehouse) and information necessary for a carrier receiving Performance Monitoring Reports to verify the accuracy of such reports."[187] Without the adoption of appropriate audit safeguards and access to the necessary data, CLECs, the Commission and other regulatory agencies cannot validate or rely on the performance results reported by BellSouth.

99. BellSouth responded to this need in its prior Section 271 applications for South Carolina and Louisiana by stating that it had implemented a "Data Warehouse," which it represented would contain all of the information necessary to enable others to monitor whether parity was being provided to CLECs.[188] BellSouth stated at that time that its "target date for

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[186] The AT&T-BellSouth Agreement states that "BellSouth shall . . . provide the raw data used to calculate each measurement for AT&T [under the Agreement] as reasonably requested by AT&T," and that Bell-South and AT&T shall jointly develop an audit plan with respect to BellSouth's installation intervals for its own customers. AT&T-BellSouth Agreement, Att. 12, Sec. 1.2 & 2.1. However, that proposed audit plan is far too narrowly limited to only one of BellSouth's many proposed performance measurements, and BellSouth has not established procedures for the implementation of that audit right. Moreover, both the obligation to provide raw data and the limited audit right under the Agreement extend only to AT&T.

[187] *Georgia Performance Measurements Order*, p. 30.

[188] *See, e.g.*, Stacy First Louisiana Performance Measurements Aff., ¶¶ 13-15.